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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,580	11/14/2003	Paul Wentworth	1361.027US1	1792
21186	7590	11/15/2006		
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				
			EXAMINER	
			HINES, JANA A	
			ART UNIT	PAPER NUMBER
			1645	

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/714,580

Applicant(s)

WENTWORTH ET AL.

Examiner

Ja-Na Hines

Art Unit

1645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

The proposed after final amendments will not be entered because they raise new issues that require further search and consideration. The new issues that drawn to the method of generating ozone wherein the source of singlet oxygen would not on its own, inhibit the growth of the bacteria when exposed to light. This limitations was not previously recited by the claims and appears to narrow the scope of the claims. Furthermore, the proposed amendment does not place the application in better form for appeal. Therefore the after final amendment will not be entered.

It is noted that applicants arguments are drawn to the proposed after final amendment which has not been entered, therefore applicants' arguments towards such are not relevant at this point in prosecution

Applicant's urge that priority to valid with respect to 60/426,242. However, priority cannot be granted to 60/426,245 since what is now claimed, has not been previously recited in the other applications, contrary to applicants assertions. The instant claims are drawn to a method of generating ozone to inhibit the growth of a microbe comprising contacting a bacterium with (i) an antibody that can bind to the bacterium and (ii) a source of singlet oxygen. However, the provisional applications, for which priority is claimed 60/426,245 fail to teach a method of generating ozone to inhibit the growth of a bacterium comprising the instantly recited steps. Thus, because there was no conception of a method for generating ozone to inhibit the growth of a bacterium comprising contacting the bacterium with (i) an antibody that can bind to the bacterium and (ii) a source of singlet oxygen, the examiner's position is maintained. Applicants' support failed to point to support for: generating ozone; contacting an antibody and singlet oxygen to thereby generate ozone; or using ozone to inhibit the growth of bacterium. Furthermore, applicants' failed to supply support for the source of singlet oxygen not be covalently attached to the antibody or a source of singlet oxygen which would not on its own inhibit the growth of bacteria.

The rejection of claims 40-43 under 35 U.S.C. 102(b) as being anticipated by Devanathan et al., is maintained for reasons already of record. Applicants urge that the prior art does not teach bacterial killing by an antibody not covalently attached and that the killing is by the antibody. However the claims only require that the antibody bind the bacterium, there is no requirement that the antibody perform the bacterial killing. The source of singlet oxygen, i.e., the photodynamic sensitizer by itself is not toxic. Rather the combination of light and the sensitizer create the phototoxic characteristic. Devanathan et al., teach that for photodynamic killing of microorganism, the combination of light, oxygen and absorbing dyes called photodynamic sensitizers are essential. Thus the source of singlet oxygen, being the photodynamic sensitizer would not, on its own, inhibit the growth of bacteria contrary to applicants' statement. Therefore the rejection is maintained.

The rejection of claims 40-43 and 45 under 35 U.S.C. 102(b) as being anticipated by Berthiaume et al., is maintained for reasons already of record. Applicants urge that the prior art does not teach bacterial killing by an antibody not covalently attached and that the killing is by the antibody. However the argued limitation are not recited by the claims. Applicants' argue that Berthiaume et al., is limited to using tin(OV) chlorine e, -monoclonal antibody conjugates where the antibody conjugates whereby the antibody acts only as the delivery and has no role in actually killing the bacteria. In this case, the Berthiaume et al., reference may be relied upon because it reasonably and explicitly suggest contacting the bacterium with (i) an antibody that can bind to the bacterium and (ii) a source of singlet oxygen is a sensitizer molecule just as required by the claims. Therefore the fact that Berthiaume et al., do not recite using the antibody to actually kill the bacteria is irrelevant. The claims do not recite that the antibody must actually kill the bacteria.

The rejection of claims 40-42 and 44-47 under 35 U.S.C. 102(b) as being anticipated by Wentworth et al., in light of the Scripps Press Release of November 14, 2002 is maintained for reasons already of record. Applicants assert that Wentworth is not prior art because of Applicant's claim for domestic priority under 35 U.S.C. 119(e). However for the reasons stated in the "Priority" section of this response, priority has not been granted to 60/315,906, 60/426,242, and PCT/US01/29165. As previously stated, none of the references teach a method of generating ozone to inhibit the growth of a bacterium comprising the instantly recited steps.

The new matter rejection of claims 40-45 under 35 U.S.C. 112, first paragraph, is maintained. Applicants points to Example 3 at pages 85-90, however there is no teaching of a source of singlet oxygen that is not covalently attached to the antibody. The pages do teach the generation of ozone using antibodies and various sources of singlet oxygen's; however there is no discussion of covalent bonds. Therefore, applicant failed to specifically point to support for a source of singlet oxygen is not covalently attached to the antibody. Accordingly, it appears that there is no support in the specification.



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